



**STATE SENATOR NAN RICH  
LEGISLATIVE UPDATE  
JUNE 2011**

**LAWSUITS CHALLENGING NEW LAWS ARE NO SURPRISE  
WHEN LEGISLATURE SHOWS LITTLE REGARD FOR CONSTITUTIONAL PROTECTIONS**

Every new member of the Florida Legislature is sworn into office by taking an oath in which he or she swears to support, protect and defend both the U.S. and Florida constitutions. It's a vow that legislators should take with the utmost humility and sincerity, but unfortunately, it seems that some of my colleagues lost sight of their oath during the 2011 Legislative Session.

More than any other time since I have been in public service, the legislature passed bills this Session that have very clear constitutional flaws. On issues relating to voting, the doctor-patient relationship, and privacy, my colleagues passed legislation that either runs afoul of federal law (the supreme law of the land under the U.S. Constitution) or of court rulings that have already declared similar laws unconstitutional. Governor Rick Scott seems to share this disregard for constitutional protections, as he has already signed several of these bills into law.

As a result of the willingness of the governor and legislature to enact such constitutionally questionable legislation, we have already seen a spate of lawsuits to stop the enforcement of these laws.

One of the most egregious of these laws was HB 1355, which makes numerous changes to Florida's election laws, including reducing the time period for early voting, ending the practice of allowing voters who have moved from one county to another to change their address on Election Day, placing onerous regulations on voter registration groups (like the League of Women Voters) and making it more difficult for citizen groups to gather signatures for proposed ballot initiatives.

The American Civil Liberties Union (ACLU) and Project Vote have filed suit in federal court to stop this bill because it hasn't yet been approved by the U.S. Department of Justice, as is required under the Voting Rights Act of 1965. There will likely be legal challenges to the

substance of the law, as well. For example, the law's provision that allows supervisors of elections to have as few as 48 or as many as 96 hours of early voting in each county is likely a violation of the U.S. Constitution's Equal Protection Clause, because voters in some counties will have more opportunity to vote than others. In addition, requiring voters who move from county to county to vote a provisional ballot may disproportionately impact minority voters, a violation of the Voting Rights Act.

A lawsuit has also been brought by a group of Florida doctors and the Brady Center to Prevent Gun Violence against the so-called "Docs & Glocks" bill, which limits what doctors can ask their patients about their gun ownership. Doctors ask these questions of their patients in order to discuss gun safety issues, particularly pediatricians trying to ensure parents who own guns are careful to keep their guns locked and away from children. The bill clearly infringes on doctors' First Amendment free speech rights, which is the grounds for the lawsuit that has been brought.

Finally, a lawsuit has been brought on behalf of a state employee, in protest of Governor Scott's executive order to require random drug testing of state workers. Numerous courts have held random drug tests of public employees (without some suspicion of drug use or unless the employee's job is related to public safety) a violation of privacy protections in both the U.S. and Florida constitutions. It is also likely that a bill to require all applicants for Temporary Assistance to Needy Families (TANF) to take drug tests will be found unconstitutional, as a similar Michigan law was thrown out by a federal court in 2003.

It is difficult for me to imagine that my colleagues who voted for these bills were not aware of the constitutional implications of these proposals – certainly these concerns were raised during debate. I can't help but wonder, then, how they could support legislation that may well infringe upon Floridians' personal freedoms.

I am grateful that there are organizations and individuals who are willing to hold the legislature accountable for its actions by filing legal challenges to these laws, and I am confident the courts will fulfill their role of providing a check against legislative interference with our constitutional rights. But in the process, it will not only cost millions of taxpayer dollars in legal fees as these court challenges progress, it also sends a message that some legislators are willing to place scoring political points ahead of protecting constitutional freedoms.

As always, I appreciate the opportunity to serve as your State Senator. If you have any comments or questions on any issue related to Florida government, please feel free to contact my office at (954) 747-7933 or email at [rich.nan.web@flsenate.gov](mailto:rich.nan.web@flsenate.gov).